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ALEXANDER L. STEVAS,
CLERK

No. 82-1393

IN THE
Supreme Court of the United States

October Term, 1982

ROBERT R. KAUFMAN,

Petitioner,

vs.

**DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE
FIRST JUDICIAL DEPARTMENT,**

Respondent.

*On Petition for Writ of Certiorari to the Appellate Division, First
Department, of the Supreme Court of the State of New York*

Petitioner's Reply to Opposing Brief

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IN THE
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ROBERT R. KAUFMAN,

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DEPARTMENTAL DISCIPLINARY COMMIT-
TEE FOR THE FIRST JUDICIAL DEPARTMENT,
Respondent.

PETITIONER'S REPLY TO OPPOSING BRIEF

PRELIMINARY STATEMENT

Respondents recitals of alleged facts are incor-
rect. Respondents legal interpretations are incorrect
and not applicable.

We just received a copy of Appellate Division
Justice's letter to Michael Gentile, Esq. Although
dated April 25, 1983 we received it May 5, 1983.

Said letter concedes he was the original Referee in
this disbarment case and he signed the Appellate
Division orders dated March 16, 1982 and the order
dated June 24, 1982 denying Petitioner's application
to vacate the orders based on the illegal search and
seizure.

I

A conflict of interest here exists and existed.
Theodore R. Kufferman was the sitting Referee hear-

ing charges and reading the petitioner's data, papers and written charges submitted to him. Now he signs the orders denying the applications to vacate the taking, by coercion and threats of the data, and records as an illegal search and seizure.

A reading of Judge Kupferman's letter in effect says he doesn't know if it is.

The conflict of interest is a prima facie showing of harm-damage and prejudice and denial of a fair trial. Petitioner's due process rights have been denied him and his constitutional rights violated.

III

THERE WERE TWO SUBPOENAS SERVED. ONE RETURNABLE JANUARY 12, 1982 (EX. ANNEXED) THE SECOND RETURNABLE JANUARY 15, 1982. (EX. 2 ANNEXED)

The denial by the Appellate Division Clerk to the issuance of the first subpoena was followed by the second as an application to the Judges returnable on the same date as the motion procedure of the Appellate Division so required and respondent's counsel was so informed.

This denial of a Judicial Subpoena Duces Tecum for the production of exculpatory matter, conceded to exist, to be produced for this Appellate Division to see and examine and to aid this Court in its search for the facts to be able to rule on this application below was a violation of due process and violation of his constitutional rights as recited in our main petition. (We annex Ex. 3, counsel's consent to the adjournment of such application.)

IV

**DENIAL OF CERTIORARI BY THIS COURT
HAS NO RES JUDICATA EFFECT AND HAS
BEEN *HELD NOT TO* BE A DETERMINA-
TION OF THE MERITS.**

Respondent's recital, page 3 of its brief, is incorrect. The Court made no such statement. Annexed hereto is Exhibit four which recites: January 15, 1976

"The petition for a writ of certiorari is denied. Mr. Justice Black and Mr. Justice Douglas are of the opinion that certiorari should be granted.

Very truly yours,

John F. Davis, Clerk

By: C. T. Lyddone

Morton Liftin, Esq.
818 18th St, N.W.
Washington, D.C. 20006

V

IT IS PRECISELY BECAUSE A DENIAL OF A PETITION FOR CERTIORARI, WITHOUT MORE HAS NO SIGNIFICANCE AS A RULING THAT AN EXPLICIT STATEMENT OF THE REASON FOR DENIAL MEANS WHAT IT SAYS.

Parker v. Ellis, 362 U.S. 574, 576

The denial of a writ of certiorari imports no expression on the merits of the case.

U.S. v. Carver, 260 U.S. 482, 490.

Brown v. Allen, 394 U.S. 443.

VI

ON MATTERS OF STANDING TO RAISE FEDERAL CONSTITUTIONAL ISSUES, INCLUDING STANDING TO QUESTION THE FEDERAL CONSTITUTIONAL VALIDITY OF STATE STATUTES, THIS COURT ALONE IS THE FINAL ARBITER, AND IN SO ACTING, THIS COURT OPERATES INDEPENDENTLY OF ANY STATE COURT DETERMINATION AS TO STANDING.

Allied Stores of Ohio v. Bowers, 385 U.S. 522, 525.

Thus, where the sole basis of the state court's refusal to pass upon a federal constitutional claim is the claimant's supposed lack of standing, a matter within this Court's exclusive province, the refusal must be classed as among those denials of federal con-

stitutional claims which will support an appeal to this Court.

It has long been settled that constitutional rights may be denied as much "by the refusal of the state court to decide the question, as by an erroneous decision of it." *Lawrence v. State Tax Commission*, 286 U.S. 276, 282; also *Greene v. Louisville & Interurban R. Co.*, 244 U.S. 599, 508; *Smith v. Cahoon*, 283 U.S. 553, 564.

The particular grounds for such refusal become immaterial, be they lack of standing or some other state procedural defect. Otherwise, state courts could deprive appellants of their right to appeal to this Court by the simple expedient of finding some procedural reason for ignoring or failing to resolve federal constitutional claims properly raised before them.

VII

THE ILLEGAL SEARCH AND SEIZURE WAS CARRIED OUT BY WRITTEN THREATS AND COERCIVE DEMANDS (MAIN PETI- TION BEFORE THIS COURT)

The Respondent's letter dated August 14, 1964 (Exhibit 13a, Main Petition) has established threats and coercion and illegal taking. The demand for the return of the evidence and suppression of the evidence and papers is conceded. The use of the evidence and refusal of return and failure to suppress is conceded.

The privilege was asserted (Main Petition). The use of the petitioner's papers and records to convict

him of *fraud*, and *conversion of funds*, both crimes, is a matter of record before this Court (Main Petition).

The illegal conduct recited and detailed in the Main Petition is a violation of the Fourth Amendment of the U.S. Constitution, and this Court's holdings in *Garrity v. New Jersey*, 385 U.S. 493 and *Ullman v. United States*, 350 U.S. 422. *In Re: Gault*, 387 U.S. 133; *In Re Ruffalo*, 390 U.S. 544.

It is conceded no *Mirando* warning was issued to petitioner, whichn is a violation of this Court's holding in *Miranda v. Arizona*, 384 U.S. 436.

CONCLUSION

The orders below should be reversed in all respects, the evidence suppressed and the charges dismissed. To perform its high function in the best way "Justice must satisfy the appearance of Justice," *Offutt v. United States*, 348 U.S. 11, 14.

Respectfully submitted,

Harold J. McLaughlin
Attorney for Petitioner

EXHIBIT 1**APPELLATE DIVISION — SUPREME COURT
FIRST DEPARTMENT**

JUDICIAL SUBPOENA, DUCES TECUM

In the Matter of **ROBERT R. KAUFMAN,**
An Attorney,

The People of the State of New York

To JOSEPH ROSENBERG, Attorney for Department Disciplinary Committee, 41 Madison Avenue, New York, New York,

GREETING:

WE COMMAND YOU, That all business and excuses being laid aside, you and each of you appear and attend before The Appellate Division of the Supreme Court — First Department, at The Courthouse, 25th Street and Madison Avenue, New York, New York, on the 12th day of January, 1982 at 1:00 o'clock, in the afternoon, and at any recessed or adjourned date to give testimony in this action on the part of the Petitioner, and that you bring with you, and produce at the time and place aforesaid, a certain All handwritten notes and recordings and reports made by Michael Frank, Esq.; and the attorneys, and the assistant attorneys, and of information, conversations, and Data, and of others made, obtained, from Robert R. Kaufman and others under petition and charges of July 12, 1962 and supplemental petition of 9/3/64 and December 1, 1964, and charges made thereon, and order made thereon dated February 3,

1966, now in your custody, and all other deeds, evidences and writings, which you have in your custody or power, concerning the premises.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, Honorable Francis T. Murphy, one of the Justices of said Court, at New York, New York, the day of January, 1982.

[s] Harold J. McLaughlin

SO ORDERED

HAROLD J. McLAUGHLIN

J.S.C. *Attorney for Petitioner*

Appellate Division, First
Department

* * * *

EXHIBIT 11

APPELLATE DIVISION — SUPREME COURT FIRST DEPARTMENT

JUDICIAL SUBPOENA, DUCES TECUM

In the Matter of ROBERT R. KAUFMAN,
An Attorney,

The People of the State of New York

To JOSEPH ROSENBERG, Attorney for Department Disciplinary Committee, 41 Madison Avenue, New York, New York,

GREETING:

WE COMMAND YOU, That all business and excuses being laid aside, you and each of you appear and attend before The Appellate Division of the Supreme Court — First Department, at The Courthouse, 25th Street and Madison Avenue, New York, New York, on the 15th day of January, 1982 at 1:00 o'clock, in the afternoon, and at any recessed or adjourned date to give testimony in this action on the part of the Petitioner, and that you bring with you, and produce at the time and place aforesaid, a certain All handwritten notes and recordings and reports made by Michael Frank, Esq.; and the attorneys, and the assistant attorneys, and of information, conversations, and Data, and of others made, obtained, from Robert R. Kaufman and others under petition and charges of July 12, 1962 and supplemental petition of 9/3/64 and December 1, 1964, and charges made thereon, and order made thereon dated February 3, 1966, now in your custody, and all other deeds, evidences and writings, which you have in your custody or power, concerning the premises.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, Honorable Francis T. Murphy, one of the Justices of said Court, at New York, New York, the day of January, 1982.

[s] Harold J. McLaughlin

SO ORDERED

HAROLD J. McLAUGHLIN

J.S.C. *Attorney for Petitioner*

Appellate Division, First
Department

* * * *

Index No. APPELLATE DIVISION, SUPREME COURT,
COURT FIRST DEPARTMENT

~~COUNTY OF~~

In the Matter of ROBERT R. KAUFMAN,
an Attorney,

~~Plaintiff(s)~~

~~vs.~~

~~Defendant(s)~~

Judicial Subpoena

DUCES TECUM

HAROLD J. McLAUGHLIN, ESQ.,

Attorney(s) for Petitioner,

Office; Post Office Address; Telephone No.
32 Court Street - Suite 1700
Brooklyn, New York 11201

(212) 858-8080

It is stipulated that the undersigned witness is excused from attending at the time herein provided or at any adjourned date but agrees to remain subject to, and attend upon, the call of the undersigned attorney.

Dated:

Witness

Attorney(s) for

Sworn to before me on

Copy received for Joseph Rosenberg
11/6/82 12:44 pm
James A. Cohen

LICENSE NO.

Print name and signature

EXHIBIT 3

McLaughlin, McLaughlin & Neimark
Attorneys at Law
32 Court Street
Brooklyn, New York 11201

Appellate Division of the Supreme Court
First Judicial Department
25th Street and Madison Avenue
New York, New York
Attention: Motion Clerk

RE: ROBERT KAUFMAN
Motion on January 12, 1982

Dear Sir:

This office has agreed with Mr. Joseph Rosen to adjourn the above matter by consent to January 15, 1982.

Thanking you for your anticipated cooperation, I remain

Yours Very Truly,

[s] Harold J. McLaughlin

*** * ***

EXHIBIT 4

**OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543**

January 15, 1968

*Re: KAUFMAN v. ASSN'S OF BAR OF CITY OF
new york, No. 795, Oct. Term, 1967*

Dear Sir:

The Court today entered the following order in the
above-entitled case:

The petition for a writ of certiorari is denied.
Mr. Justice Black and Mr. Justice Douglas are of
the opinion that certiorari should be granted.

Very truly yours,

JOHN F. DAVIS, Clerk
By: C.T. Lyddone
Assistant

Morton Liftin, Esq.
818 18th St., N.W.
Washington, D.C. 20006